HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIM. APPLICATION NO.1543 OF 2005

Nandkishor A. Datt & Ors. ..Applicants/Petitioners

Versus.

Laxman A. Kurade & Ors. ..Respondents.

Shri.C.K. Pendase with Indarjeet Kulkarni and Devendranath S. Joshi for the Applicants/Petitioners.

Shri.Amre R.R. for the respondent No.1.

Smt. M.M. Deshmukh, A.P.P. for the Respondent - State.

CORAM: A.M. KHANWILKAR, J.

DATE : DECEMBER 15, 2005.

P.C.

1. Heard Counsel for the parties. Two reliefs have been claimed in this application. First relief is for quashing of the criminal action instituted against the Petitioners pending in the Court of the J.M.F.C., Chiplun being R.C.C. No.90 of 2004. In sofaras this prayer is concerned, the Counsel appearing on behalf of the Petitioner fairly states that the Petitioner will not press this relief. Accordingly, petition is not pressed in sofaras relief of quashing of criminal case is concerned. All questions in that regard are kept open.

2. Second relief is for the transfer of the said criminal case to the J.M.F.C. Court at Kalyan. This

relief is claimed on the assertion that as per the agreement entered into between the parties dated April 23, 2000, it was clearly agreed that all litigations will be pursued between the parties at Kalyan. It is then contended that the complaint as filed, no reference is made to the said agreement, in order the complaint makes out any case as to how the jurisdiction of the Chiplun Court has been invoked. The argument seems to be attractive, but without any substance.

3. Learned Counsel for the Respondent has rightly brought to my notice averments in paragraph 6 of the complaint, which refers to the fact that accused No.2 gave undertaking to the State Bank of India having branch at Chiplun which is the subject matter of the criminal action instituted against the Petitioners. If it is so, merely because no averment is made in the complaint as to why the proceedings have been instituted before the Chiplun Court it is does not mean that the Court at Chiplun does not have jurisdiction.

4. Learned Counsel for the Complainant has rightly further relied upon section 179 of the Code to contend that the agreement between the parties cannot take away the jurisdiction of the Court at Chiplun where the cause of action to proceed in relation to criminal action has arisen. Hence, relief of transfer of criminal

case pending at Chiplun Court to Court at Kalyan is rejected.

5. At this stage, Counsel for the Petitioners submits that the Petitioners are advised to take up the matter in appeal. For which interim protection, which was granted to Petitioners by this Court so far, to continue for a further period of four weeks. This request is opposed by the Counsel for the Complainant. However, in the interest of justice the stay granted by this Court to continue for a further period of four weeks from today.

(A.M.KHANWILKAR, J.)